IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

OP.No. 1818 of 2002(N)

PETITIONER:

P.M. MEERANNAN KUTTY, AGED 75 YEARS,
S/O. MUZHAVANNAN RAWTHER, PARACKAL HOUSE,
KANJIRAPPALLY.

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENTS:
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1. DISTRICT COLLECTOR, KOTTAYAM.

2. AGRICULTURAL INCOME TAX AND SALES
TAX OFFICER, NILAMBUR.

3. TAHSILDAR, KANJIRAPPALLY.

BY GOVERNMENT PLEADER SRI. K.P. PRADEEP

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 19/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMPS 3118/02 & 34900/02 IN CMP 3118 OF 2002 IN OP 1818 OF 2002

DISMISSED

19.11.2007 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE RELEVANT PORTION OF THE AGREEMENT DATED 21.2.1984 EXECUTED BETWEEN THE PETITIONER AND THE D. VASUDEVAN ANMBOOTHIRIPAD.

EXT.P2 TRUE COPY OF THE AGREEMENT DATED 19.12.1985 EXECUTED BETWEEN THE PETITIONER AND MAJEED.

EXT.P3 TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 1984-85 NO. 21140 768/84-85 DATED 13.3.1989 ISSUED BY THE ADDL. SALES TAX OFFICER II, PONKUNNAM.

EXT.P4 TRUE COPY OF THE ORDER NO. STA 454/88 AND 476/88 DATED 3.10.88 OF APPELLATE ASSISTANT COMMISSIONER, AIT & ST, KOZHIKODE.

EXT.P5 TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 1986-87 NO. A-3643/86-87 DATED 28.7.1997 ISSUED BY THE 2ND RESPONDENT.

EXT.P6 TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 1987-88 NO. A 3843/87 (87-88) DATED 25.7.1997 ISSUED BY THE SALES TAX OFFICER, NILAMBUR.

EXT.P7 TRUE COPY OF THE NOTICE NO. B2-14/98/ST DATED 9.10.2001 OF TAHSILDAR, KANJIRAPPALLY.

EXT.P8 TRUE COPY OF THE PETITION SUBMITTED BY THE PETITIONER TO THE FIRST RESPONDENT DATED 10.10.2001

EXT.P9 TRUE COPY OF THE DOCUMENT DATED 11.10.2001 EXECUTED BY THE PETITIONER IN FAVOUR OF HIS CHILDREN.

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

O.P. NO. 1818 OF 2002

Dated this the 19th day of November, 2007

JUDGMENT

Petitioner is challenging recovery proceedings for recovery of arrears of sales tax due for 1986-87 and 1987-88. The petitioner's grievance is that though assessment is in the combined names of four persons, including the petitioner, recovery is initiated only against the petitioner. Strangely petitioner has not impleaded the others who are liable. However, since Exts. P5 and P6 orders dated 25.7.1997 show that others are also jointly and severally liable along with petitioner, I dispose of the O.P. with direction to the third respondent to verify the proceedings issued by the requisitioning authority and if it is on record that other three persons are also liable, to proceed for recovery against them after issuing notice to them if not already done. Petitioner will furnish address of other three persons and also particulars of their properties for the third respondent to proceed with recovery. However, I make it clear that since liability is joint and several, if recovery is not possible from others, full liability can be recovered from the petitioner.

If petitioner has transferred any property to his son, as stated by the Government Pleader, such sale is invalid by virtue of the provisions of the AIT Act as well as Section 44 of the RR Act and in that event, third respondent will declare such transaction as illegal and proceed with recovery against such property also. Petitioner will along with a copy of this judgment remit 25 per cent of the balance demand within one month from the date of receipt of a copy of this judgment before the third respondent and only if petitioner makes payment as above, third respondent will proceed against other three persons for balance three-fourths of the demand or otherwise full amount will be recovered from the petitioner.

(C.N. RAMACHANDRAN NAIR)
Judge